

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-03-DL-229
)	
Paulino Bernal Evangelism, Inc.)	
KBRN(AM))	NAL/Acct No. 200432500001
Boerne, Texas)	FRN 0005733662

FORFEITURE ORDER

Adopted: October 14, 2004**Released: October 19, 2004**

By the Assistant Bureau Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Paulino Bernal Evangelism (“Paulino”), licensee of radio broadcast station KBRN(AM), Boerne, Texas, for willful and repeated violation of Sections 73.1125, 11.35(a) and 73.3527(c)(1) of the Commission’s Rules (“Rules”).¹ The noted rule violations involve its failure to maintain a main studio in its community of license, failure to install and maintain operational Emergency Alert System (“EAS”) equipment during the hours of station operation, and failure to make available a public inspection file.

2. In a December 19, 2003 *Notice of Apparent Liability for Forfeiture* (“*NAL*”), the District Director of the Commission’s Dallas, Texas Field Office (“Dallas Office”) proposed a monetary forfeiture of twenty-five thousand dollars (\$25,000) to Paulino.² On March January 20, 2004, Paulino filed a response to the *NAL* (“response”) wherein it challenged only the public inspection file violation and sought a reduction or cancellation in the proposed forfeiture because of an inability to pay and history of no prior offenses.

II. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁵ In examining Paulino’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of

¹ 47 C.F.R. §§ 73.1125, 11.35(a) and 73.3527(c)(1).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432500001 (Enf. Bur., Dallas Office, rel. Dec. 19, 2003).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

4. In its response, Paulino challenges one issue – its failure to make available the public inspection file in accordance with Section 73.3527(c)(1) of the Rules.⁷ Paulino asserts that the file has long been located in an envelope in plain sight at the station's studio/transmitter. Paulino submits that a limited knowledge of the English language, combined with panic at the arrival of the Enforcement Bureau's field agent ("agent"), resulted in its station manager's forgetting the location of that file. Paulino's assertion is of no moment. The Commission has found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities.⁸ Given the file's importance, the licensee should have, at the very least, ensured that its personnel could tender the file under any circumstance.

5. Paulino also seeks a reduction or cancellation of the *NAL*'s proposed forfeiture on the basis of an inability to pay and a history of no prior offenses. As evidence of an inability to pay, Paulino asserts that the struggling, noncommercial station relies on donations from listeners and the services of volunteers. Paulino explains that the difficult economic climate has prompted it to suspend operations at several of its stations. According to Paulino, the proposed forfeiture would compound those losses, resulting in more station closings. In the underlying *NAL*, we explained that the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits certain documentation.⁹ Paulino did not proffer the required information. Mere assertions are insufficient to underpin a finding of an inability to pay. The cases that Paulino identifies to bolster its claim are misplaced because unlike Paulino, those entities submitted sufficient financial documentation upon which the Commission could make a determination on the issue.¹⁰ Because Paulino has not provided sufficient information from which we can evaluate the financial condition of KRBN(AM), we must reject its inability to pay claim.

6. Paulino rightfully states that the subject station has no history of prior offenses. However, Paulino owns not one, but several broadcast stations, one of which is also the subject of an *NAL*.¹¹ Given Paulino's history of prior rule violations, we must reject this claim.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ At the time of the October 28, 2003, inspection, the station's technical representative failed to make the public inspection file available to the agent.

⁸ *Review of the Commission's Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15700 (1998).

⁹ *NAL* at 4.

¹⁰ Paulino cites *Tri-County Telephone Co.*, 54 RR 2d 1065 (1983) for the proposition that ultimately a station's ability to pay is a function of the licensee's profitability. However, in *PJB Communications*, 7 FCC Rcd 2088, 2089 n.4 (1983) the Commission held that to the extent that *Tri-County* suggested that a focus on profit alone was an appropriate basis for a financial hardship showing, it was overruled. Regardless, Paulino submits no supporting financial documentation concerning its profitability or lack thereof. The rest of the proffered cases – *First Greenville Corp.*, FCC Rcd 7399 (1996); *Benito Rish*, 10 FCC Rcd 2861 (1995) and *Pinnacle Communications*, 11 FCC Rcd 15496 (1996) – concern entities that, unlike Paulino, submitted sufficient financial documentation upon which the Commission could make a determination concerning the issue of inability to pay.

¹¹ Mr. Bernal also owns station KUOL(AM), San Marcus, Texas. On December 19, 2003, Commission staff issued an *NAL* concerning that station, citing a violation of Section 73.1125 (failure to maintain a main studio presence in

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7. We have examined Paulino's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Paulino willfully¹² and repeatedly¹³ violated Sections 73.1125, 11.35(a) and 73.3527(c)(1) of the Commission's Rules. Further, we find that neither cancellation nor reduction of the proposed monetary forfeiture is warranted.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Paulino Bernal Evangelism, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Sections 73.1125, 11.35(a) and 73.3527(c)(1) of the Commission's Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Barry D. Wood, Wood, Maines & Brown, Chartered, 1827 Jefferson Place, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Bureau Chief, Enforcement Bureau

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the community of license). *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432500002 (Enf. Bur., Dallas Office, rel. Dec. 19, 2003).

¹² As provided by 47 U.S.C. § 312 (f)(1), the term "willful" does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation

¹³ As provided by 47 U.S.C. § 312(f)(2), a violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.